High Country News

KNOW THE WEST

A whistleblower speaks out over excavation of Native sites

In California, archaeologists unearthed Indigenous burials 11 years ago, but the remains have yet to be repatriated.

Tay Wiles | **Nov. 12, 2020** | *From the print edition*

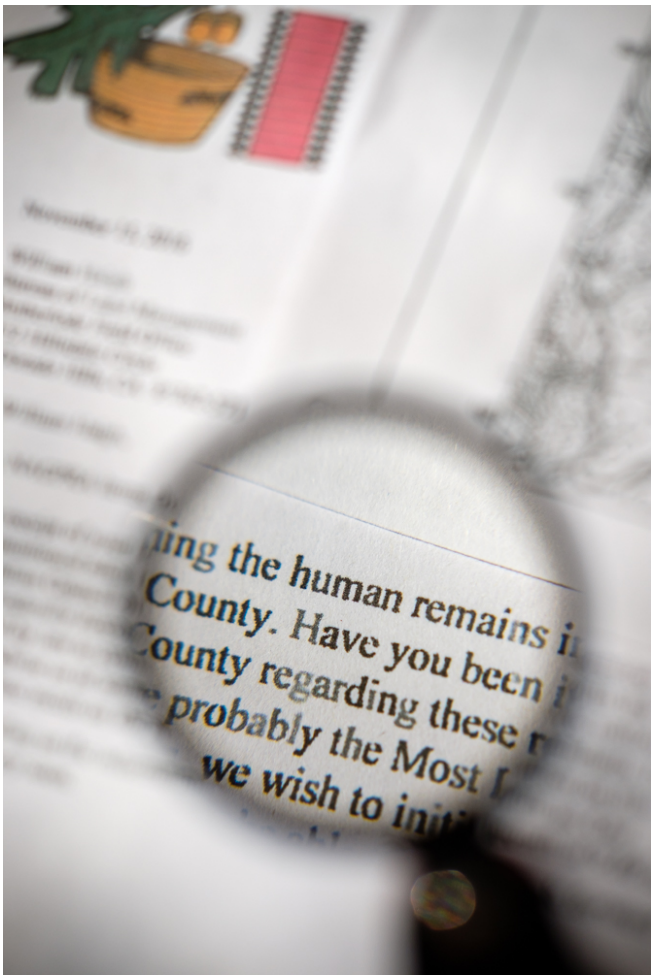
In 2009, while excavating prehistoric artifacts, graduate student archaeologists from the University of California-Davis found Indigenous funerary objects and fragments of human bone. But despite what the law requires, according to internal documents obtained by *High Country News*, the archaeologists kept digging at the site. They continued the excavation, and apparently left a local tribe in the dark about their findings for years.

The remains were likely relatives of either the Southern Sierra Miwuk Nation or Tuolumne Band of Me-Wuk Indians, who are based in Mariposa and Tuolumne counties in the western foothills of the Sierra Nevada. The researchers collected at least 72 fragments and much of a human skull. At the time of this article, officials with the Bureau of Land Management — the agency that approved the digs — had not repatriated the remains, despite requests from tribes. “I haven’t even seen the artifacts and human remains yet,” said Southern Sierra Miwuk Tribal Chairman Bill Leonard. Stephanie Bergman, a former archaeologist at the BLM’s Mother Lode Field Office in El Dorado Hills, California, where the digs were authorized, blew the whistle on what she alleges was misconduct by the university and her former employer.

The case illuminates the often-fraught relationship between archaeological study and Indigenous rights, and the BLM's failure to hold violators accountable. Bergman, who now works for the National Park Service, hopes that her experience will shed light on these issues. Unanswered questions abound, and the BLM has failed to confirm even basic facts. But Bergman provided *HCN* with a patchwork of internal documents that reveal a bureaucratic process that can leave tribes disenfranchised when they try to protect their ancestors' still-buried remains, or recover them once they're unearthed — especially if that tribe is not federally recognized.

IT'S UNCLEAR WHY those UC Davis students were pulling human remains out of burial sites in the first place. The problems began in June 2009 in the central Sierra Nevada foothills. UC Davis anthropology professor Jelmer Eerkens had a BLM permit to dig on federal land in Mariposa County, where his students hoped to find obsidian artifacts from the Indigenous communities who lived here over 3,000 years ago. Three digs revealed shell beads and a shell pendant, along with fragments of cranium, ribs, scapula, clavicle and other remains of six individuals. They halted some portions of the digs "due to the discovery of human remains," according to a student dissertation that Bergman acquired. The puzzling part is why they continued with the rest, pulling dozens of bone fragments out of the ground, according to internal emails, rather than immediately stopping so the BLM could consult tribes, as is required by the Native American Graves Protection and Repatriation Act (NAGPRA).

Seven years later, in 2016, Eerkens notified the BLM that the students had only just realized, upon closer review in a lab, that they had excavated fragmentary human, not animal, bones. Yet the dissertation claims the students knew they had encountered human remains at those sites, at the time of the digs: "Excavation of three of the units had to be halted … due to the discovery of human remains," the student wrote. "The remaining six units were excavated." Both Eerkens and the former graduate student declined to speak with *HCN*.



Former Bureau of Land Management employee Stephanie Bergman is speaking out about what she believes was repeated misconduct by BLM officials and archaeologists at a public university. Internal documents obtained by HCN show how Bergman made complaints to the Office of Inspector General, who referred the matter back to the BLM to investigate.

Roberto (Bear) Guerra/High Country News

Following Eerkens' notification, the BLM sent a letter to inform the Tuolumne Me-Wuk, the closest federally recognized tribe in the area, about the remains. The Tuolumne Me-Wuk suggested contacting the Southern Sierra Miwuk: "We realize that they are not Federally Recognized but are probably the (most likely descendants). If you are not allowed by law to consult with them, we wish to initiate consultation on this matter."

But Southern Sierra Miwuk Chairman Leonard didn't hear about the issue until 2018. "If there's no federally recognized tribe in the county, (BLM officials) don't go through the protocols they should because we don't have that government-to-government relationship," he told *HCN*. In 2018, the two tribes asked that the relatives and funerary objects be repatriated. The agency declined to answer why repatriation has not yet happened.

"I was thinking, 'Are these things in his garage, and how many does he have?' "

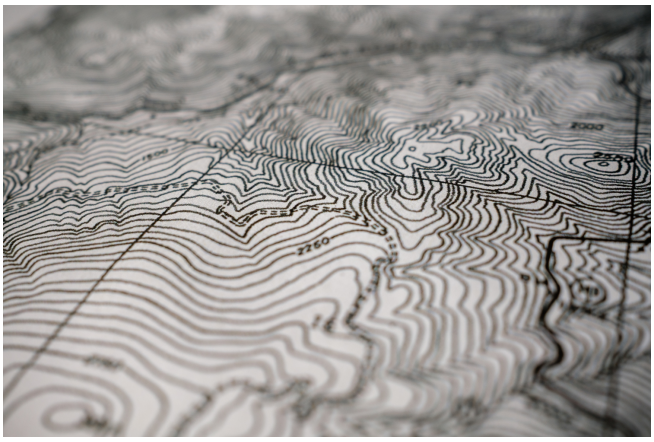
Where are the remains and artifacts now? That's also murky. Since the excavations occurred on BLM land, the agency has legal control. But spokespeople would not answer questions on the topic. According to Chairman Leonard, his most recent information places the remains at UC Davis. Yet an employee with the university's anthropology museum told *HCN* the remains are not there. Bergman, the former BLM archaeologist, says that Eerkens explained during a meeting in 2018 that he had at least some of them in his personal possession — even though federal law requires storage in a federally approved facility. "I was thinking, 'Are these things in his garage, and how many does he have?' " Bergman recalled.

INTERNAL DOCUMENTS INDICATE that issues with the university's field school — and the BLM's permitting and consultation practices — continued well past 2009. In the summer of 2010, the school planned more fieldwork in Mariposa County. "I know that this type of information is very valuable to research and it will help others to understand our ancestors and their way of life," wrote Tuolumne Me-Wuk Cultural Director Stanley Cox in a letter to the BLM before the digs began. "But we cannot condone excavating archeological sites just in the name of research so a graduate student can make a name for themselves." The letter was dated a week past the Archaeological Resources Protection Act deadline to air grievances.

The crunched timeline was a pattern, according to Bergman. Both she and her predecessor, now an archaeologist in Wyoming, received last-minute permit proposals from UC Davis that left less than the legally required 30 days for

tribal consultation. “I think they were doing this knowing that I/the BLM/ wouldn't have time to scrutinize the application, nor would the tribes,” Bergman later wrote in an internal complaint. “I was too new and too busy to question it all or know the difference.” It’s unclear how the archaeologists responded to the Tuolumne Me-Wuks’ letter, or whether burials were found that summer, but the BLM did authorize a permit.

If any field schools took place between 2010 and 2016, records for these projects were missing, as of a 2018 internal BLM investigation.



High Country News obtained hundreds of pages of documents that included maps, permits for archaeological digs and internal emails. The documents show how graduate student archaeologists excavated human remains in Mariposa County, California, in 2009.

Roberto (Bear) Guerra/High Country News

In the summer of 2017, part of a human skull was unearthed in Mariposa County when a wildfire crew bulldozed an area in response to a blaze. The sheriff was notified, as is standard procedure. A deputy called Leonard, who quickly came to the site, and together they found the cranium. “We prayed over it and put it back in the ground,” Leonard told *HCN*. Two months after Leonard reinterred the remains, the BLM authorized UC Davis to excavate at the same site, according to site numbers on the research proposal and other documents. It’s unclear whether that dig took place or why the agency authorized work at a site known to have human remains.

The BLM also apparently approved a "human remains discovery protocol" that year on how to handle inadvertently discovering burials. The protocol, submitted by a UC Davis researcher, provides a window into where the process may be breaking down, stating: "Upon discovery of human remains, excavation in the unit of discovery will cease immediately. … While the protocol for human remains discovery is being undertaken, work will continue at the site in areas away from the unit where the human remains were discovered." This policy received mixed reviews from several experts in archaeology and cultural resource law — perhaps a reflection of varying interpretations of the Native American Graves Protection and Repatriation Act.

One California archaeologist said it seemed like standard procedure — that NAGPRA only requires excavation to urgently stop in the burial's immediate area, not necessarily at the entire site. Other legal experts were alarmed. Leonard and his two predecessors told me it would be highly unusual to let archaeologists continue digging anywhere near a burial. For her part, Bergman emailed her supervisors about the UC Davis protocol: "(It) gives the field school and the BLM the authority to not comply to NAGPRA." She sent her concerns to Emily Palus, at the time deputy division chief of cultural resources for the entire BLM. Palus told *HCN* over the phone that she did have concerns about the "university's write-up" and "per protocol, I contacted Tony Overly, the BLM cultural lead in the (California) state office." The BLM did not answer *HCN*'s multiple requests to interview Overly.

AS THE NEW MOTHER LODE FIELD OFFICE archaeologist in 2018, Bergman had to review requests from developers, researchers and anyone else whose work on BLM land might have archaeological impacts. Within a week of her new job, she noticed unresolved questions regarding the UC Davis field school. Bergman, who was concerned when she heard burials had been excavated in 2009, couldn't find much documentation of previous field schools. But while searching the office, she discovered something else disconcerting. "Stephanie (Bergman) was … reviewing our very old files on this, dating back to the late 1990s," then-field manager Bill Haigh wrote in an email to colleagues. "While doing so she discovered a plastic bag filled with what appear to be human remains. In our files. Related to the first (UC Davis)

field school." The bag was labeled with the name of a former field office archeologist from the '90s and stored with a folder labeled "NA Remains." Bergman never learned what became of the remains.

Bergman began to worry that this was more than just a single mistake by a well-meaning graduate student or overworked BLM manager — that it was an ongoing problem. Weeks before the field school was to start that summer, Bergman convinced her superiors to deny UC Davis any new fieldwork permits. She then complained to the Office of Inspector General about the constellation of issues surrounding the BLM's archaeological permitting practices — from apparently allowing burial excavations in 2009, to the bag of bones at the office. OIG officials kicked her complaint to the BLM. The land agency completed a basic review of records (https://beta.documentcloud.org/documents/20403588-13-dan-haas-final-report-redact) related to the complaint, as well as a rigorous law enforcement investigation of its employees' conduct. One of the investigative reports, which *HCN* obtained, said documentation of 2009, 2010 and 2017 digs was missing from the BLM's files. "There are no field maps, field notes, artifact catalogs, locational data, periodic updates or a final report in the files," Colorado BLM archaeologist Daniel Haas said in the report. "The permit records do not show that reporting was completed in a timely fashion, if at all." Haas noted that the principal investigator on the BLM permit, likely the professor in this case, needed to provide more oversight of graduate student fieldwork in the future.

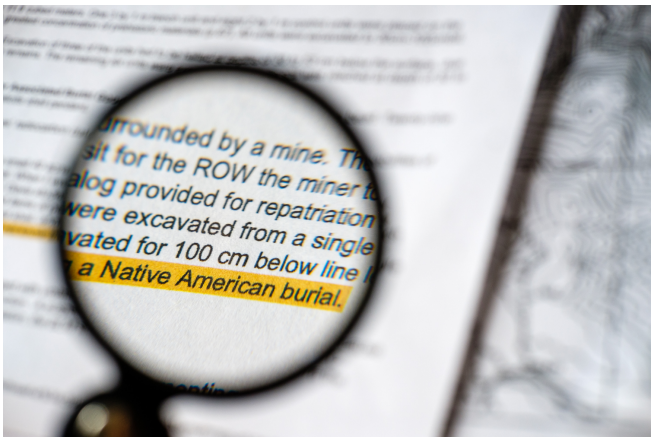
The BLM also referred the case to the U.S. Attorney's Office in Sacramento. Experts say it can be difficult to convince federal attorneys to take on NAGPRA or ARPA cases. "Crimes of violence, common law crime, people hurting people, those are easy (for federal attorneys) to see as important," said David Barland-Liles, a National Park Service law enforcement manager and National NAGPRA Office Investigator. "But crimes against resources, particularly resources of a cultural nature … presenting those to the U.S. Attorney's Office — those are harder sells." A public information officer with the U.S. Attorney in Sacramento declined to comment on whether they investigated the case. By October 2019, the "BLM Director" referred the case to

the California state director for "administrative action," according to internal emails. It's not clear whether California BLM did take any internal disciplinary actions.

The only repercussions the university archaeologists faced appear to be a letter from the BLM.

The only repercussions the university archaeologists faced appear to be a letter from the BLM. In 2018, the agency drafted a missive, noting that the school had violated the terms of its Archaeological Resources Protection Act permits, as well as NAGPRA. In June 2020, *HCN* asked the BLM about the status of the letter, which *HCN* obtained. Three weeks later, in July, the agency issued a finalized letter (https://beta.documentcloud.org/documents/20403624-blm-letter-2020) to Eerkens, requiring him to send reports and deposit the ancestral remains and funerary objects at an approved curatorial facility this fall. "The BLM is assessing the adequacy of the University's performance with regards to the permits," Martha Maciel, a public information officer at the time, wrote in an email. "The BLM will work to bring it into conformance."

At the time of this article, the agency did not respond to multiple requests to interview James Barnes, who helped shepherd the UC Davis permits in 2009 and 2010, and is now head of California BLM's tribal relations. Calls to the Tuolumne Me-Wuk have also gone unanswered. Eerkens told *HCN* by email that the Tuolumne Me-Wuk are "working with the BLM" regarding the remains and objects excavated in 2009, "and out of respect to the tribe and their ancestors, they asked me not to talk about this further. I apologize." Eerkens did not mention the Southern Sierra Miwuk, whose territory his graduate students excavated.


rrounded by a mine. Th
it for the ROW the miner t
log provided for repatriation
were excavated from a single
vated for 100 cm below line
a Native American burial.

"It is difficult to fathom archaeologists did not know they were excavating a Native American burial," reads an email from a former Bureau of Land Management archaeologist to her colleagues. Internal emails obtained by HCN show how the agency decided to deny permit requests for archaeological digs in Mariposa County, California, because of long-standing issues with the permittee.

Roberto (Bear) Guerra/HCN

"It is difficult to fathom archaeologists did not know they were excavating a Native American burial."

FOR SOUTHERN SIERRA MIWUK CHAIRMAN LEONARD, the real problem underlying this tangled mess is that his tribe is not federally recognized. "If we were recognized, the BLM couldn't dodge us," he told me. Since 1982, the tribe has actively sought recognition. The U.S. government said in its latest rebuff that the Southern Sierra Miwuk do not constitute a modern "community." Being unrecognized means the tribe isn't always protected under federal archaeology laws. It must work alongside a recognized tribe in order to participate in the consultation that the BLM is required to do before archaeological digs.

"We have to go to our big brother over in Tuolumne or someone else and say, 'Hey (the government is) picking on me.' " Leonard said. In the case of the Mariposa County excavations, the Tuolumne Me-Wuk Tribe is assisting in the

stalled repatriation process. “We’re fortunate to have a tribe there to help us. … Without them we’d have been just bulldozed over in a sense.”

Without recognition, Leonard also can’t access various funding sources for administrative staff. That makes consultation nearly impossible. “Even when they say you have the right to participate, yeah, it’s kind of like access to health insurance. You can buy it if you’ve got enough money,” Leonard said. “(The BLM will) pick a tiny spot out of thousands of acres and then say, ‘What are your concerns?’ ” Leonard said with a shrug. That kind of question takes time and resources to answer — two things he has in short supply. This is a problem not just for the tribe, but for the BLM, whose attempts at consultation can fail if the tribal chairman is unable to respond.

[RELATED:https://www.hcn.org/articles/indian-country-news-why-native-remains-are-treated-like-collectors-items]

Over the years, however, Leonard said, working with universities and the federal government on archaeology and repatriation has gotten “a lot better.” While the BLM process is still challenging, he’s optimistic that the issue of the Mariposa County excavations will be resolved. He received a letter from the BLM this summer that said the agency wanted to conduct tribal consultation. Bergman, meanwhile, left the BLM in frustration over how she says her superiors handled these issues. Leonard spoke with the new archaeologist at the Mother Lode Field Office a few months ago and was encouraged by her attitude. “I think we’re going to have different results in the future,” he said. Until Leonard gets his ancestors back, he’ll be banking on promises. “I felt like she was going to make sure that these things didn’t happen in the future. As long as she was there.”

Note: This article has been updated to clarify Emily Palus’s job title.

Tay Wiles is a contributor to High Country News *in California. Email HCN at editor@hcn.org (mailto:editor@hcn.org) or submit a letter to the editor (https://www.hcn.org/feedback/contact-us).*

Get our Indigenous Affairs newsletter ↓

Email Address

Sign up ›

Copyright © High Country News